

SUBCHAPTER A : APPLICATIONS PROCESSING

§§281.1-281.32

Effective June 5, 1997

§281.1. Purpose.

It is the intent of the Texas Natural Resource Conservation Commission to establish a general policy for the processing of applications for permits, licenses and other types of approvals in order to achieve the greatest efficiency and effectiveness possible. To this end, it is the policy of the commission that applications for permits, licenses, and other types of approvals listed in §281.2 of this title (relating to Applicability) be processed by the executive director according to the schedule established in this chapter, except as provided by implementation of the prioritization procedure for commercial hazardous waste management facility permit applications under §§281.30-281.32 of this title (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste; Definitions; Prioritization Process).

§281.2. Applicability.

These sections are applicable to the processing of:

- (1) applications for new, amended or renewed water use permits, certificates of adjudication and certified filings, and extensions of time to commence and/or complete construction of water use facilities;
- (2) applications for new, amended or renewed wastewater discharge permits;
- (3) applications for new, amended, or renewed injection well permits;
- (4) applications for new, amended, or modified or renewed industrial solid and/or municipal hazardous waste permits filed pursuant to §335.2 of this title (relating to Permit Required) and §335.43 of this title (relating to Permit Required) or for new or amended compliance plans filed pursuant to §305.401 of this title (relating to Compliance Plan);
- (5) applications for plan approval of reclamation projects (levees, etc.);
- (6) applications for creation of water districts;
- (7) water district applications and petitions requiring commission approval;
- (8) applications for weather modification permits and licenses;
- (9) applications for new or amended certificates of convenience and necessity;
- (10) applications for new, amended, or renewed municipal solid waste permits; and
- (11) applications for new, amended, or renewed radioactive material licenses.

§281.3. Initial Review.

(a) Applications for permits, licenses, or other types of approvals, except as provided in subsections (b) and (d) of this section, shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application by the executive director.

(b) Applications made under §335.43 of this title (relating to Permit Required) or §331.7 of this title (relating to Permit Required) shall be reviewed by the staff for administrative completeness within 15 working days after assignment of the application to a staff member for review under this section. Prior to commencement of review of an application under this section, the executive director shall notify the applicant by first-class mail of the date on which the review will commence.

(c) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, applicants for existing hazardous waste management facilities shall have 30 days from receipt of notice of deficiency in a Part A permit application to respond to the notification and to explain or cure the alleged deficiency in the Part A application. Applicants shall be afforded this opportunity to cure the deficiencies before the executive director may pursue enforcement action concerning deficient applications.

(d) Applications made under Chapter 336 of this title (relating to Radioactive Substance Rules) for issuance or renewal of a license, or for major amendments to a license, shall be reviewed for administrative completeness within 45 days after receipt of the application by the executive director. Applications for minor amendments shall be reviewed for administrative completeness within 30 days after receipt of the application by the executive director.

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§281.4. Applications for Use of State Water.

Applications for the use of state water must include:

- (1) complete application form(s), signed and notarized;
- (2) the payment of fees in accordance with §§295.131-295.139 of this title (relating to Water Use Permit Fees);
- (3) the verified legal status of the applicant;
- (4) appropriate ownership documents (including easements and consents);
- (5) an adequate map or plat; and
- (6) the required engineering plans or studies; and
- (7) any other information as the executive director or the commission may reasonably require.

§281.5. Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste and Industrial Solid Waste Management Permits.

Applications for wastewater discharge, underground injection, municipal solid waste, hazardous waste and industrial solid waste management permits must include:

- (1) complete application form(s), signed and notarized, and appropriate copies provided;
- (2) the payment of fees, if applicable;
- (3) the verified legal status of the applicant;
- (4) the signature of the applicant, checked against agency requirements;
- (5) the attachment of technical reports and supporting data required by the application;
- (6) a list of adjacent and potentially affected landowners and their addresses along with a map locating the property owned by these persons; and
- (7) any other information as the executive director or the commission may reasonably require.

§281.6. Applications for Plan Approval of Reclamation Projects.

Applications for plan approval of reclamation projects must include:

- (1) complete application form(s), signed and notarized;
- (2) an engineering report and supporting data; and
- (3) a list of adjacent and potentially affected landowners along with a map locating the land owned by these persons; and
- (4) any other information as the executive director or the commission may reasonably require.

§281.7. Applications for Weather Modification Permits.

Applications for weather modification permits and licenses must include:

- (1) complete application form(s);
- (2) the payment of fees;
- (3) for weather modification permits, a notice of intention approved in form by the executive director in accordance with §289.17 of this title (relating to Notice of Intention); and

(4) any other information as the executive director or the commission may reasonably require.

§281.8. Applications for Local Sponsor Designation.

An application for designation as the local sponsor of a project under the Texas Water Code, §16.092, shall include:

- (1) a detailed description of the proposed project, including the location and purpose(s) of the project;
- (2) the reasons for the application;
- (3) the contemplated use of water the applicant might derive from the project if a permit for use is subsequently granted by the commission; and
- (4) the contributions the applicant is prepared to make to the planning and/or development of the project.

§281.16. Applications for Certificates of Convenience and Necessity.

Applications for certificates of convenience and necessity must include:

- (1) three copies of the appropriate application form prescribed by the executive director, completed as instructed, and properly executed;
- (2) territorial maps filed in support of such application for initial or amended certificates that fulfill the following requirements;
 - (A) for water and sewer utilities, the area to be served shall be shown on a state highway county map, scale one-inch equals two-miles. It shall clearly define the proposed location of the applicant and each neighboring water or sewer utility within five miles of applicant's present location, and service boundaries shall conform to verifiable landmarks such as roads, creeks, railroads, etc. Facilities shall be shown on United States Geological Survey 7½-minute series maps, subdivision plats, engineering planning maps, or other large scale maps;
 - (B) three copies of each map shall be filed;
 - (C) separate maps shall be filed for each county in which the reporting utility operates;
 - (D) if applicable, the map shall separately indicate the production facilities, transmission facilities, and distribution facilities as located within the territory claimed. A color code may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with

such exactness that the facility can be located "on the ground" from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location;

(3) three copies of any evidence as required by the commission to show that the applicant has received the required consent or permit of any other public authority having jurisdiction, for example, municipalities;

(4) any other information as the executive director or the commission may reasonably require.

§281.17. Notice of Receipt of Application and Declaration of Administrative Completeness.

(a) Applications for use of state water. If an application for the use of state water, other than for a permit under §297.13 of this title (relating to Temporary Permit) or §297.17 of this title (relating to Emergency Permit), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing or publishing, and a brief technical summary of the application to assist the chief clerk. The executive director shall forward a copy of the statement and brief technical summary to the chief clerk, along with a copy of the application. The chief clerk shall notify every person entitled to notification of the filing of an application under §295.153 of this title (relating to Notice by Mail) by mail in the manner provided therein.

(b) Applications for temporary permits to use state water. If an application for a temporary permit, other than a provisional temporary permit under §295.181 of this title (relating to Applications for Temporary Permits; Provisional Issuance in Certain Cases), for the use of state water is received containing the required information and attachments required by §281.4 of this title (relating to Applications for Use of State Water) as set forth therein, the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing or publishing, and shall forward a copy of the statement to the chief clerk. The chief clerk shall mail a copy of the statement of the receipt of the application and declaration of administrative completeness to every water rights holder of record with the commission who would be entitled to notice of hearing under §295.154 of this title (relating to Notice for Temporary Water Use Permit).

(c) Applications for provisional temporary permits to use state water. When an application for a provisional temporary permit for the use of State Water under §295.181 of this title (relating to Application for Temporary Permits; Provisional Issuance in Certain Cases), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the chief clerk shall cause notice of the receipt of the application and declaration of administrative completeness to be published in the Texas Register. The chief clerk may include in the notice other information concerning the disposition of the application.

(d) Other applications. Upon receipt of an application described in §281.2(2) or (5)-(11) of this title (relating to Applicability), which contains the information and attachments required by §§281.5-281.7 and 281.16 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste, and Industrial Solid Waste Management Permits; Applications for Plan Approval of Reclamation Projects; Applications for Weather Modification Permits; and Applications for

Certificates of Convenience and Necessity), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed injection well permit, for a new, amended, or renewed industrial solid waste permit, or for a new or amended compliance plan as described in §281.2(3) and (4) of this title, the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable for publishing or mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed radioactive material license as described in Chapter 336 of this title (relating to Radioactive Substance Rules), the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable for mailing and shall forward that statement to the chief clerk prior to the expiration of the administrative review periods established in §281.3(d) of this title (relating to Initial Review). The chief clerk shall notify every person entitled to notification of a particular application under the rules of the commission.

(e) Notice requirements. The notice of receipt of the application and declaration of administrative completeness, or for applications for a new, amended, or renewed injection well permit, or for a new or amended compliance plan as described in §281.2(3) and (4) of this title (relating to Applicability), the notice of receipt of the application, shall contain the following information:

- (1) the identifying number given the application by the executive director;
- (2) the type of permit or license sought under the application;
- (3) the name and address of the applicant and, if different, the location of the proposed facility;
- (4) the date on which the application was submitted; and
- (5) a brief summary of the information included in the application.

(f) Notice of application and draft permit. Nothing in this section shall be construed so as to waive the requirement of notice of the application and draft permit in accordance with Chapter 39 of this title (relating to Public Notice) for applications for radioactive material licenses, and for wastewater discharge, underground injection, hazardous waste, municipal solid waste, and industrial solid waste management permits.

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§281.18. Applications Returned.

(a) If an application or petition is received which is not administratively complete, the executive director shall notify the applicant of the deficiencies prior to expiration of the applicable review period established by §281.3(a), (b) and (d) of this title (relating to Initial Review) by certified mail return receipt requested. If the additional information is received within 30 days of receipt of the deficiency notice, the executive director will evaluate the information within eight working days and, where applicable, shall

prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). For applications for radioactive material licenses, the executive director shall evaluate the information received in response to a notice of deficiency within thirty days. If the required information is not received from the applicant within 30 days of the date of receipt of the deficiency notice, the executive director shall return the incomplete application to the applicant.

(b) For applications involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment applications for radioactive material licenses, the executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this chapter, the application shall be considered withdrawn. However, if applicable, the applicant is responsible for the cost of any notice provided under §281.17 of this title and the costs of such notice shall be deducted from any filing fees submitted by the applicant prior to return of the incomplete application.

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§281.19. Technical Review.

(a) After an application is determined by the executive director to be administratively complete, the executive director shall commence a technical review as necessary and appropriate. For purposes of these sections, the technical review period is that period of time beginning with the completion of the initial review period and will continue for a period of time not to exceed 75 working days. In the case of applications filed under §291.102 of this title (relating to Certificate Required), the technical review period is that period of time beginning 30 days after notice of the application has been given in accordance with §291.109 of this title (relating to Notice and Hearing for Applications for Certificates of Convenience and Necessity) and will continue for a period of time not to exceed 75 working days. In the case of applications filed under §335.43 of this title (relating to Permit Required) or §331.7 of this title (relating to Permit Required), the technical review period shall commence upon assignment of the application to a staff member and continue for a period of time not to exceed 120 days. For applications filed under Chapter 336 of this title (relating to Radioactive Substance Rules) and subject to the Notice of Deficiency (NOD) process established in this section, the technical review period shall begin the day after the date of determination of administrative completeness and for issuance, renewal, or major amendments, shall continue for a period of time not to exceed 255 days; however, this time frame may be extended to a maximum of 450 days if an application is technically deficient; or, for applications for minor amendments, shall continue for a period of time not to exceed 90 days; however, this time frame may be extended to a maximum of 150 days if an application is technically deficient.

(b) Except as provided in subsection (c) of this section, the applicant shall be promptly notified of any additional technical material as may be necessary for a complete review. If the applicant provides the information within the period of time prescribed by subsection (a) of this section, the executive director will complete processing of the application within the technical review period extended by the number of days required for the additional data. If the necessary additional information is not received by the executive director prior to expiration of the technical review period and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director

may return the application to the applicant. In no event, however, will the applicant have less than 30 days to provide the technical data before an application is returned. Decisions to return material to the applicant during the technical review stage will be made on a case by case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision instead of having the application returned.

(c) For applications for radioactive material licenses, the applicant shall be promptly notified of any additional technical information necessary to complete technical review. For new applications, renewal applications, or major amendment applications, the executive director shall complete application processing within the technical review period (450 days) if the applicant provides the information within 75 days of the date of the first NOD and 60 days of the second NOD. For minor amendments, the applicant must provide the information within 20 days from the date of the first NOD and 20 days from the date of the second NOD. If the necessary additional information is not received by the executive director prior to the end of the response period, the executive director may return the application to the applicant. In no instance shall the executive director issue more than two NOD's before returning the application. The applicant has the option of having the question of sufficiency of necessary technical information referred to the commission for a decision instead of having the application returned. The applicant may request additional time to respond to a notice of technical deficiency. The request must be in writing, set forth the reasons why the applicant cannot respond within the time provided and specify the amount of additional time requested. Any extension of time must be approved by the executive director in writing.

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§281.20. Extension.

If the staff determines that the technical review of an application cannot be completed within the period of time prescribed by §281.19 of this title (relating to Technical Review), the staff will furnish the executive director or his designee with written information regarding the reasons which necessitate the delay and the amount of additional time required by the staff to complete the review. Any extension of the period for technical review must be approved by the executive director or his designee in writing.

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§281.21. Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary.

(a) The provisions of this section are applicable to applications for waste disposal activities conducted under the authority of the Texas Water Code, Chapters 26 and 27, and the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, and the Texas Radiation Control Act, Texas Health and Safety Code, Chapter 401.

(b) The executive director shall prepare a draft permit consistent with all applicable commission rules, unless a recommendation is made not to grant an application. The draft permit will be filed with the commission to be included in the consideration of the application for permit and is subject to change during the course of the proceedings on the application. The draft permit shall be available for public review.

(c) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The executive director shall send this summary together with the draft permit to the applicant and on request, to any other person. The summary shall include the following information, where applicable:

- (1) a brief description of the type of facility or activity which is the subject of the draft permit;
- (2) the type and quantity of radioactive materials, wastes, fluids, or pollutants which are proposed to be or are being used, processed, stored, disposed, injected, emitted, or discharged;
- (3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
- (4) reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (5) a description of the procedures for reaching a final decision on the draft permit, including procedures whereby the public may participate in the final decision; and
- (6) the name and telephone number of any persons to contact for additional information.

(d) The executive director shall prepare a summary which describes the compliance status of persons applying for permits issued under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361; the Texas Radiation Control Act, Texas Health and Safety Code, Chapter 401; the Injection Well Act, Texas Water Code, Chapter 27; and the Water Quality Control Act, Texas Water Code, Chapter 26. For applications filed under the Texas Solid Waste Disposal Act or the Injection Well Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the commission under the authority of both statutes. For applications filed under the Water Quality Control Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the commission under the authority of the Texas Water Code. For applications for minor amendments filed under the Texas Radiation Control Act, the executive director may determine that a compliance summary is not necessary. Upon completion of technical review and prior to issuance of public notice, the executive director shall send the compliance summary, together with the draft permit, technical summary if applicable, and environmental analysis if applicable, to the applicant and on request, to any other person. The compliance summary shall include information relative to the site which is the subject of the current application as well as other facilities owned or operated by the applicant which are under the commission's jurisdiction whether permitted or not. The summary shall cover at least the two-year period preceding the date on which technical review is completed and shall include:

- (1) the date(s) and description of any citizen complaints received;
- (2) the date(s) of all agency inspections;

(3) for each inspection, whether a condition of noncompliance was alleged by the inspector and a brief description of the resulting environmental impact and, for radioactive material licenses, any impact on radiation safety;

(4) the date(s) of any agency enforcement action and the applicant's response to such action;

(5) for applicable facilities, the date(s) and description of any incident the applicant reported to the agency which required implementation of the facility's contingency plan; and

(6) the name and telephone number of a person to contact for additional information regarding compliance history.

(e) Additional conditions for TPDES draft permits and fact sheets are as follows:

(1) TPDES draft permits shall include the information required by 40 Code of Federal Regulations (CFR) §124.6(c)-(e), as in effect on the date of TPDES program authorization, as amended, which is adopted by reference; and

(2) A fact sheet shall be prepared for a TPDES permit and shall include the information required by 40 CFR §124.56, as in effect on the date of TPDES Program authorization, as amended, which is adopted by reference.

(f) Additional conditions for radioactive material licenses:

(1) The executive director shall prepare a written environmental analysis of a proposed license activity as required by Chapter 336 of this title (relating to Radioactive Substance Rules); and

(2) The executive director shall make the environmental analysis available to the applicant and the public.

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§281.22. Referral to Commission.

(a) When administrative and technical review has been completed, the application shall be forwarded to the commission for filing and setting. For the purpose of providing adequate notice, the executive director shall include a recommendation to the commission of the area wherein the application, if granted, would have a potential impact, and a mailing list of persons who may be affected. For applications for radioactive material licenses, upon completion of technical review, the executive director shall forward the draft license, technical summary, compliance summary, and, if applicable, the environmental analysis to the chief clerk for public notice, or shall forward a recommendation to deny the license.

(b) For applications involving hazardous waste or an injection well, the commission shall not issue a permit before receiving a complete application for a permit. For underground injection wells, an application for a permit is complete when the executive director receives an application form and any supplemental information which are completed to his or her satisfaction. For underground injection wells, the completeness

of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. However, a facility may be eligible for a permit by rule or may be subject to an emergency order.

(c) After an application under this section for a permit authorizing proposed commercial hazardous waste management units providing new or previously unpermitted capacity is determined by the executive director to be technically complete, the executive director shall prepare a summary of the most recent information on the need for the proposed processing or disposal technology, including the following information:

- (1) estimated current statewide capacity for the technology;
 - (2) projected estimated statewide demand from the most recent Needs Assessment, as defined under §281.31 of this title (relating to Definitions);
 - (3) regional factors documented by the applicant if a regional need has been demonstrated;
- and
- (4) any other waste management information deemed relevant by the executive director.

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§281.23. Application Amendment.

(a) No amendments to an application which would constitute a major amendment under the terms of §305.62 of this title (relating to Amendment) or Chapter 336 of this title (relating to Radioactive Substance Rules) can be made by the applicant after the chief clerk has issued notice of the application and draft permit, unless new notice is issued which includes a description of the proposed amendments to the application. For purposes of this section, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(b) For applications under Chapter 336 of this title (relating to Radioactive Substance Rules), an application amendment received after commencement of technical review, shall be processed as follows:

(1) The executive director shall determine whether the application amendment constitutes a major amendment as defined in §336.2 of this title (relating to Definitions) or constitutes a substantial technical change to the application. Substantial technical changes may include changes in proposed waste disposal methods, enlargement or relocation of proposed areas to be licensed, transfer of an application to another applicant, significant changes in proposed facilities or operations, or other changes which will require extensive technical review.

(2) An application amendment that constitutes a major amendment or a substantial technical change shall be processed as a new and separate application.

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§281.24. Effect of Rules.

The time limits set out in these rules are not jurisdictional.

§281.25. Additional Facilities and Projects for Which TPDES Permits Are Required.

The following regulations contained in 40 Code of Federal Regulations (CFR) Part 122, which are in effect as of the date of TPDES Program authorization, as amended, are adopted by reference.

(1) Part 122, Subpart B - Permit Applications and Special TPDES Program Requirements, §122.23, requiring permits for concentrated animal feeding operations. The adoption of 40 CFR §122.23 does not apply to Subchapter B of Chapter 321 of this title (relating to Commercial Livestock and Poultry Production Operations) where discharges are prohibited.

(2) Part 122, Subpart B - Permit Applications and Special TPDES Program Requirements, §122.24, requiring permits for concentrated aquatic animal production facilities, except 40 CFR §122.24(c)(2).

(3) Part 122, Subpart B - Permit Applications and Special TPDES Program Requirements, §122.25, requiring permits for discharges into aquaculture projects.

(4) Part 122, Subpart B - Permit Applications and Special TPDES Program Requirements, §122.26, requiring permits for storm water discharges.

(5) Part 122, Subpart B - Permit Applications and Special TPDES Program Requirements, §122.27, requiring permits for silvicultural activities.

§281.26. Applications for New Commercial Hazardous Waste Management Facility Permits.

The commission shall not process an application for a new commercial hazardous waste management facility unless the applicant provides the evidence or demonstration required under §305.50(12)(C)(i) or (ii) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

§281.30. Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications.

(a) The following applications for permitting of new capacity at commercial hazardous waste management facilities shall be prioritized as specified in §281.32 of this title (relating to Prioritization Process):

(1) permit applications submitted after the effective date of this section; and

(2) permit applications submitted prior to the effective date of this section, except as provided under subsection (b) of this section.

(b) Prioritization in accordance with §281.32 of this title (relating to Prioritization Process) shall not be made for applications for permitting of new capacity at commercial hazardous waste management facilities for which notice under §305.100 of this title (relating to Notice of Application) has been issued prior to the effective date of this section.

(c) Sections 281.30-281.32 of this title (relating to Application Processing) do not apply to an application for permitting of unit(s) at a commercial hazardous waste management facility if the unit(s) is to be used solely for the management of wastes generated at the facility which are not the result of commercial hazardous waste management activities.

(d) Nothing in this rule shall limit the ability of the commission to prioritize any permit application.

§281.31. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Commercial hazardous waste management facility - Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

Current management practice(s) - The most commonly used technologies for processing or land disposing of targeted waste stream(s) generated in the State of Texas, as evidenced by the most recent computerized annual or monthly waste management reports submitted by waste handlers to the commission.

Needed technology - A technology included in Table 2 of the Executive Summary of the most recent publication of the Needs Assessment. Technologies on Table 2 of the Executive Summary of the Needs Assessment are demonstrated processing or disposal technologies which are needed on a statewide basis.

Needs assessment - Texas Natural Resource Conservation Commission document entitled "Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas," dated February 28, 1992, and its amendments or updates, a copy of which is available for inspection at the library of the Texas Natural Resource Conservation Commission, located at 12118 North Interstate Highway 35, Building A, Austin, Texas.

New capacity - Unpermitted volume, quantity, or rate of throughput for the management of hazardous waste at a hazardous waste management facility provided by any of the following: proposed units or systems; interim status units or systems; or modifications to permit operating conditions, such that additional quantities or types of waste would be managed.

Table 2 - Table 2 of the Executive Summary of the most recent publication of the commission document entitled "Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas" dated February 28, 1992, and its amendments or updates, a copy of which is available for inspection at the library of the Texas Natural Resource Conservation Commission, located at 12118 North Interstate Highway 35, Building A, Austin, Texas.

Targeted waste stream(s) - A hazardous waste stream(s) generated in the State of Texas which will be managed by a specific technology at a specific facility. The applicant shall define targeted waste streams, by EPA hazardous waste numbers and the form of the waste, or by other identifiers approved in writing by the executive director.

§281.32. Prioritization Process.

(a) This section specifies how an application for a commercial hazardous waste management facility shall be designated as expedited.

(b) For permit applications received after the effective date of this section, prioritization will occur at the time of receipt of a Part B hazardous waste permit application.

(c) Permit applications for storage capacity at the same facility or a different facility owned by the same parent company which also offers recycling, processing, or disposal services shall have the same priority as the recycling, treatment or disposal technology with which it is associated.

(d) Prioritization of permit applications for needed, innovative, or regional technologies shall be as follows:

(1) If the technology covered by the application is not identified on Table 2, the applicant may submit the information described under subsections (e) or (f) of this section. If all processing and/or land disposal capacity included in the permit is associated with a needed or demonstrated innovative or regional technology, then the application is designated as expedited.

(2) If more than 70% of the total maximum annual throughput capacity of recycling, processing, and disposal units or process trains covered by the application is associated with a needed or demonstrated innovative or regional technology, then the application is designated as expedited subject to the following applicable requirements:

(A) The applicant must specify whether or not each hazardous waste recycling, processing, or disposal unit is a needed or demonstrated innovative or regional technology;

(B) The applicant must specify whether or not each hazardous waste recycling, processing, or disposal unit, associated with or part of a process train, is a needed or demonstrated innovative or regional technology, based on the following:

(i) for permit applications containing multiple units functioning in series in order to recycle, process, and/or dispose of hazardous waste, the individual units shall be considered part of a process train; and

(ii) whether or not each unit is a needed, innovative or regional technology shall be evaluated based on the technology represented by the process train. A unit is considered to be a needed, innovative or regional technology if it is associated with or part of a process train which is a needed, innovative or regional technology;

(C) The applicant shall calculate the percentage figure to be used under subsection (d)(2) of this section to determine the priority for the entire application as follows:

(i) total the maximum annual throughput capacity for hazardous waste recycling, processing, and/or disposal in units or process trains covered by the application that are associated with or identified as a needed or demonstrated innovative or regional technology;

(ii) divide the total from clause (i) of this subparagraph by the total maximum annual throughput capacity of all recycling, processing, and disposal units and process trains covered by the application; and

(iii) multiply the quotient from clause (ii) of this subparagraph by 100.

(e) An application including an innovative technology to process hazardous waste shall be designated as expedited if the applicant demonstrates that the proposed innovative technology meets the requirements of subsections (d) and (e)(1) or (2) of this section, and obtains the written approval of the executive director.

(1) The proposed innovative technology must be demonstrated to be a substitute for a technology which is on Table 2. To make this demonstration, the applicant must:

(A) identify the targeted waste streams and show that the proposed innovative technology would be able to process the same types of waste streams, based on information available in the most recent Needs Assessment, as would be managed by the needed technology for which the innovative technology is proposed to be substituted; and

(B) show that use of the proposed innovative technology would not move a targeted waste stream down the state's waste management hierarchy, from the substituted needed technology to a less preferred management method, in accordance with the public policy concerning hazardous waste management under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon 1992), §261.023.

(2) The proposed innovative technology must be demonstrated to implement the state's public policy on hazardous waste management as specified under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, §361.023. To make this demonstration, the applicant shall demonstrate to the satisfaction of the executive director that the proposed innovative technology is a more preferred management method, higher in the state's waste management hierarchy, when compared to current management practices used for handling the targeted waste streams, and shall submit at least the following information, to the satisfaction of the executive director, for the targeted waste stream(s), whether managed in or out of the State of Texas, or managed on-site or off-site:

- (A) types and quantities of targeted waste streams generated in the State of Texas;
- (B) current management practice for processing or land disposing of the targeted waste stream; and
- (C) a favorable comparison of the type and quantity of residuals and products generated by the innovative technology and current management practices.

(f) If no statewide need has been identified in Table 2 and if an applicant considers that there is a regional need for the proposed technology, then the applicant may submit additional information specified under subsections (f)(1)-(3) of this section to demonstrate that the permit application should be designated as expedited, in accordance with this subsection and subsection (d) of this section. In order for the proposed regional technology to be designated as expedited, the approximate annual quantity of the targeted hazardous waste stream(s) which are generated within the region, which will be processed and/or disposed commercially, and which could not be processed or disposed by other commercial hazardous waste management facilities in the region, shall equal at least 60% of the total hazardous waste capacity of the proposed unit(s). All data used to support this analysis shall be from the Texas Natural Resource Conservation Commission hazardous and industrial waste annual or monthly waste management reports submitted by owners and operators of hazardous waste management facilities, except as noted in this subsection. The applicant will define the region, subject to the written approval of the executive director, which must consist of at least one county and shall not extend outside the State of Texas. The regional waste management analysis under this subsection must include only hazardous wastes generated in the State of Texas. Subject to the written approval of the executive director, a permit application may be designated as expedited based on regional need, in accordance with this subsection and subsection (d) of this section, and provided that the applicant submits the following information:

(1) a description of the targeted waste stream(s) by form and EPA hazardous waste numbers, including the approximate annual quantity generated in the region that is processed or disposed at any commercial hazardous waste management facility using the same technology. If significant changes in on-site management options have occurred in the region since the preparation of the most recent Needs Assessment, the applicant may document the approximate annual quantity generated, the generator, and type of hazardous waste which will require commercial hazardous waste management, and include this quantity in the applicant's regional analysis. The applicant may also submit data, other than Texas Natural Resource Conservation Commission data, substantiating that there is a regional need, specifying waste stream type, including form and EPA hazardous waste numbers; approximate annual quantity generated; and identity of the generators and their location in the region;

(2) a map delineating the boundaries of the region, and showing the locations of the following:

- (A) the facility where the new capacity is proposed; and
- (B) all other existing, permitted, or interim status commercial hazardous waste management facilities that offer the same hazardous waste processing and/or disposal technologies in the State of Texas; and

(3) a comparison of the annual capacity of the proposed technology to the quantity of the targeted waste streams which:

(A) are generated within the region; and

(B) cannot be processed or disposed by other commercial hazardous waste management facilities within the region.

(g) Permit applications for hazardous waste facilities consisting of only hazardous waste storage unit(s), with no hazardous waste processing or disposal unit(s), shall not be expedited, with the following exceptions:

(1) permit applications for storage-only facilities associated with a different facility owned by the same parent company which offers recycling, processing, or disposal services using a needed technology shall be prioritized as provided in subsection (c) of this section; and

(2) permit applications for hazardous waste storage needed on a regional or statewide basis, provided that the applicant submits documentation consisting of at least one of the following, subject to the written approval of the executive director:

(A) an analysis of targeted waste stream(s) and commercially available waste management technologies, showing that there is no processing or disposal technology commercially available for management of the targeted waste stream(s) in the State of Texas; or

(B) a regional analysis documenting the demand for storage by the region's generators, including the distances hazardous wastes are transported for storage, the quantities transported, and a map showing the locations of commercial storage facilities in the region.